

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

BALCH & BINGHAM LLP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No.: CV-08-HGD-2281-S
	)	
U.S. COMMODITY FUTURES	)	
TRADING COMMISSION,	)	
	)	
Defendant.	)	

**EVIDENTIARY SUBMISSION IN SUPPORT OF DEFENDANT  
COMMODITY FUTURES TRADING COMMISSION'S MOTION TO  
DISMISS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**

Comes now Defendant U. S. Commodity Futures Trading Commission, by and through Alice H. Martin, United States Attorney for the Northern District of Alabama, and submits the following evidence in support of its motion to dismiss for Plaintiff's failure to exhaust administrative remedies.

Exhibit 1 Declaration of Stacy Easter (with attached Exhibit A and Exhibit B)  
Exhibit A, Plaintiff's Emailed FOIA Requests;  
Exhibit B, CFTC Response to FOIA Request, dated 6 Nov 2008.

Exhibit 2 Dynegy Detailed Written Justification of FOIA Confidential Treatment Request, dated 13 Oct 2008.

Exhibit 3 El Paso Detailed Written Justification of FOIA Confidential Treatment Request, dated 20 Oct 2008.

Exhibit 4 CFTC Final Response to Plaintiff's FOIA Request, dated 10 Dec 2008.

Exhibit 5 Plaintiff's Administrative Appeal, dated 8 Jan 2009.

Respectfully submitted,

ALICE H. MARTIN  
United States Attorney

s/ Edward Q. Ragland  
EDWARD Q. RAGLAND  
Assistant United States Attorney  
1801 Fourth Avenue North  
Birmingham, AL 35203  
205-244-2109  
[Ed.Ragland@usdoj.gov](mailto:Ed.Ragland@usdoj.gov)

**Of Counsel**

Terry S. Arbit  
General Counsel  
Bradford M. Berry  
Deputy General Counsel  
Lynn A. Bulan  
Counsel  
Office of General Counsel  
Commodities Futures Trading Commission  
1155 21st Street, NW  
Washington, DC 20581  
Phone: 202-418-5143  
Fax: 202-418-5567

**CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

/s Edward Q. Ragland  
Edward Q. Ragland  
Assistant United States Attorney